

Volume X (1994-2000)
AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE AND PARLIAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD

Dated the 11th October, 2000.

No. 696-702/LD/Leg/2000. The following Act of the Assembly received the assent of the President on 6th October, 2000 is hereby published for general information:-

(ACT IV OF 2000)

AN
ACT

to provide for the protection, conservation, rehabilitation and improvement of the environment for the prevention and control of pollution and promotion of sustainable development.

WHEREAS, it is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

1. **Short title, extent and commencement:-** (1) This Act may be called the Azad Jammu and Kashmir Environmental Protection Act, 2000.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions:-** in this Act, unless there is anything repugnant in the subject or context:-
 - (i) “adverse environmental effect” means impairment of, or damage to, the environment and includes:-
 - (a) impairment of, or damage to, human health and safety or to biodiversity or property;
 - (b) pollution; and
 - (c) any adverse environmental effect as may be specified in the regulations;
 - (ii) “agricultural waste” means waste from farm and agricultural activities including poultry, cattle farming, animal husbandry, residues from the use of fertilizers, pesticides and other farm chemicals;
 - (iii) “air pollutant” means any substance that causes pollution of air and includes soot, smoke, dust, particles, odor, light, electro-magnetic, radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances and radioactive substances;
 - (iv) “biodiversity” or “biological diversity” means the variability among living organisms from all sources, including inter alia terrestrial, marine and other aquatic ecosystems and the

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ecological complexes of which they are part, this includes diversity within species, between species and of ecosystems;

(v) "Council" means the Azad Jammu and Kashmir Environmental Protection Council established under section 3;

(vi) "discharge" means spilling, leaking, pumping, depositing, releasing, flowing out, pouring, emitting, emptying or dumping;

(vii) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(viii) "effluent" means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapor;

(ix) "emission standards" means the permissible standard established by the Azad Jammu and Kashmir Environmental Protection Agency for emission of air pollutants and noise and for discharge of effluents and waste;

(x) "environment" means

(a) air, water and land;

(b) all layers of the atmosphere;

(c) all organic and inorganic matter and living organisms;

(d) the ecosystem and ecological relationships;

(e) buildings, structures, roads, facilities and works;

(f) all social and economic conditions affecting community life, and

(g) the inter-relationships between any of the factors in sub-clauses (a) to (f);

(xi) "environmental impact assessment" means an environmental study comprising collection of data; prediction of qualitative and qualitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements and framing of recommendations and such other components as may be prescribed;

(xii) "Environmental Magistrate" means the Magistrate of the First Class appointed under section 23;

(xiii) "Environmental Tribunal" means the Environmental Tribunal constituted under section 19;

(xiv) "factory" means any premises in which industrial activity is being undertaken;

(xv) "Agency" means Azad Jammu & Kashmir Environmental Protection Agency established under section 5, or any Government Agency, local council or local authority

exercising the powers and functions of the Azad Jammu & Kashmir Agency;

(xvi) “Government” means the Azad Government of the State of Jammu & Kashmir.

(xvii) “Government Agency” includes-

- (a) a department, attached department, section, commission, board, office or unit of the Azad Jammu & Kashmir Government;
- (b) A developmental or a local authority, company or corporation, established or controlled by the Azad Jammu & Kashmir Government;
- (c) Any other body defined and listed in the rules of business of the Azad Jammu & Kashmir Government.

(xviii) “hazardous substance” means-

- (a) a substance or mixture of substances, other than a pesticide, which, by reason of its chemical activity or toxic, explosive, flammable, corrosive, radioactive or other characteristics causes, or is likely to cause, directly or in combination with other matters, an adverse environmental effect; and
- (b) any substance which may be prescribed as hazardous substance;

(xix) “hazardous waste” means waste which is or which contains a hazardous substance or which may be prescribed as hazardous waste, and includes hospital waste and nuclear waste;

(xx) “hospital waste” includes waste medical supplies and materials of all kinds, and waste blood, tissue, organs and other parts of the human and animal bodies, from hospitals, clinics and laboratories;

(xxi) “industrial activity” means any operation or process for manufacturing, making, formulating, synthesizing, altering, repairing, ornamenting finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes;

(xxii) “industrial waste” means waste resulting from an industrial activity;

(xxiii) “initial environmental examination” means a preliminary environmental review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed

project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment;

(xxiv) “Local authority” means any agency set-up or designated by the Azad Jammu & Kashmir Government by notification in the official Gazette to be a local authority for the purposes of this Act;

(xxv) “local council” means a local council constituted or under a law relating to local government;

(xxvi) “motor vehicle” means any mechanically propelled vehicle adapted for use upon land whether its power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached, and a trailer, but does not include a vehicle running upon fixed rails;

(xxvii) “municipal waste” includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and the like;

(xxviii) “Environmental Quality Standards” means standards established by the Agency under clause (e) of sub-section (1) of section 6 and approved by the Council under clause (c) of sub-section (1) of section 4;

(xxix) “noise” means the intensity, duration and character of sounds from all sources, and includes vibration;

(xxx) “nuclear waste” means waste from any nuclear reactor on nuclear plant or other nuclear energy system, whether or not such waste is radioactive;

(xxxi) “person” means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, co-operative society, Government Agency, non-governmental organization, community-based organization, village organization, local council or local authority and, in the case of a vessel, the master or other person having for the time being the charge or control of the vessel;

(xxxii) “pollution” means the contamination of air, land or water by the discharge or emission of effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavorably the chemical, physical, biological, radiation, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity;

(xxxiii) “prescribed” means prescribed by rules made under this

Act;

(xxxiv) “project” means any activity , plan, scheme, proposal or undertaking involving any change in the environment and includes-

- (a) construction or use of buildings or other works;
- (b) construction or use of roads or other transport systems;
- (c) construction or operation of factories or other installations;
- (d) mineral prospecting, mining, quarrying, stone, crushing, drilling and the like;
- (e) any change of land use or water use; and
- (f) alteration expansion, repair, decommissioning or abandonment of existing buildings or other works, road or other transport systems, factories or other installations;

(xxxv) “proponent” means the person who proposes or intends to undertake a project;

(xxxvi) “regulations” means regulations made under this Act;

(xxxvii) “rules” means rules made under this Act;

(xxxviii) “sewage” means liquid or semi-solid-wastes and sludge from sanitary conveniences, kitchens, laundries, washing and similar activities and from any sewerage system or sewage disposal works;

(xxxix) “standards” means qualitative and quantitative standard for discharge of effluent and wastes for emission of air pollutants and noise either for general applicability or for a particular area, or form a particular production process, or for a particular product, and includes the National Environmental Quality Standards, emission standards and other standards established under this Act and the rules and regulations made thereunder;

(xl) “sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs;

(xli) “vessel” includes anything made for the conveyance by water of human beings or of good; and

(xlii) “waste” means any substance or object which has been or is being is intended to be discarded or disposed of and includes liquid waste, solid waste, waste gasses, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polyethylene bags and residues from the incineration of all types of waste.

3. **Establishment of the Azad Jammu & Kashmir Environmental Protection Council:-** (1) The Government

shall, by notification in the Official Gazette, establish a Council to be known as the Azad Jammu & Kashmir Environmental Protection Council consisting of-

- (i) Prime Minister Chairperson
 - (ii) Minister Incharge of Ministry dealing with the subject of environment. Vice-Chairperson
 - (ii) Additional Chief Secretary Members
(Development) and Secretaries to the Government dealing with subjects of Works, Local Government, Agriculture, Forest, Health, Industry and Finance.
 - (iv) Such other persons not exceeding fifteen members as the Government may appoint of which at least ten shall be non-official including two representative of the Chambers of Commerce and Industry and industrial associations and one or more representatives of the Chambers of Agriculture, the medical and legal professions, trade unions, and non-governmental organizations concerned with the environment and development, and scientists, technical experts and educationists.
 - (v) Secretary to the Government dealing with the subject of environment. Member/Secretary
- (2) The members of the Council, other than ex-officio members, shall be appointed in accordance with the prescribed procedure and shall hold office for a term of three years.
 - (3) The Council shall frame its own rules of procedure.
 - (4) The Council shall hold meetings as and when necessary, but not less than two meetings shall be held in a year.
 - (5) The Council may constitute committees of its members and entrust them with such functions as it may deem fit, and the recommendations of the committees shall be submitted to the Council for approval.
 - (6) The Council or any of its committees may invite any technical expert or representative of any Government Agency or non-governmental organization or other person possessing specialized knowledge of any subject for assistance in performance of its functions.

4. Functions and powers of the Council:- (1) Council shall.—

- (a) coordinate and supervise enforcement of the provisions of this Act;
 - (b) approve comprehensive national environmental policies and ensure their implementation within the framework of a national conservation strategy as may be approved by the Government from time to time;
 - (c) approve the Environmental Quality Standards;
 - (d) provide guidelines for the protection and conservation of species, habitats, and biodiversity in general, and for the conservation of renewable and non-renewable resources;
 - (e) coordinate integration of the principles and concerns of sustainable development into national development plans and policies; and
 - (f) consider the Environment Report and give appropriate directions thereon.
- (2) The Council may, either itself or on the request of any person organization, direct the Agency or any Government Agency to prepare, submit, promote or implement projects for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, and the sustainable development of resources, or to undertake research in any specified aspect of environment.

5. Establishment of the Azad Jammu & Kashmir environmental protection agency:-

(1) The Government shall, by notification in the official Gazette, establish the Azad Jammu & Kashmir Environmental Protection Agency, to exercise the powers and perform the functions assigned to it under the provisions of this Act and the rules and regulations made thereunder.

(2) The Agency shall be headed by a Director General, who shall be appointed by the Government for a term of three years further extendible to another two years. However, for the first three years after the promulgation of this Act the Government shall assign the powers and functions of Director General of the Agency in Ex-Officio capacity to any suitable officer already working in BPS-20

(3) The Agency shall have such administrative, Technical and legal staff as the Government may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) The powers and functions of the Agency shall be exercised and performed by the Director-General.

(5) The Director General may by general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).

(6) For assisting the Agency in the discharge of its functions, the Government may establish Advisory Committees for various sectors, and appoint as members thereof eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

6. **Functions of the Agency:-** (1) The Agency shall—

- (a) administer and implement the provisions of this Act and the rules and regulations made thereunder;
- (b) prepare in coordination with the appropriate Government Agency and in consultation with the concerned sectoral advisory committees, environmental policies for approval by the Council;
- (c) take all necessary measures for the implementation of the environmental policies approved by the Council;
- (d) Prepare and publish an annual Environment Report on the state of the environment;
- (e) prepare or revise, and establish the Environmental Quality Standards with approval of the Council;

Provided that before seeking approval of the Council, the Agency shall publish the proposed Environmental Quality Standards for public opinion in accordance with the prescribed procedure; and

- (f) ensure enforcement of the Environmental Quality Standards;
- (g) establish standards for the quality of the ambient air, water and land, by notification in the official Gazette,

Provided that-

- I. different standards for discharge or emission from different source and for different areas and conditions may be specified;
 - II. certain areas, with the approval of the Council, may exclude from carrying out specific activities, projects from the application of such standards;
- (h) co-ordinate environmental policies and programs nationally and internationally;
 - (i) establish systems and procedures for surveys, surveillance, monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors;
 - (j) take measures to promote research and the development of science and technology which may contribute to the

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prevention of pollution, protection of the environment, and sustainable development;

- (k) certify one or more laboratories as approved laboratories for conducting tests and analysis and one or more research institutes as environmental research institutes for conducting research and investigation, for the purposes of this Act;
- (l) Identify the needs for and initiate legislations in various sectors of the environment;
- (m) render advice and assistance in environmental matters, including such information and data available with it as may be required for carrying out the purposes of this Act:

Provided that the disclosure of such information shall be subject to the restrictions contained in the proviso to subsection (3) of section 11;

- (n) assist the local councils, local authorities, Government Agencies and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the standards established by it;
 - (o) provide information and guidance to the public on environmental matters;
 - (p) recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions;
 - (q) promote public education and awareness of environmental issues through mass media and other means, including seminars and workshops.
 - (r) specify safeguards for the prevention of accidents and disasters which may cause pollution, collaborate with the concerned person in the preparation of contingency plans for control of such accidents and disasters, and co-ordinate implementation of such plans;
 - (s) encourage the formation and working of non-governmental organizations, community organizations and village organizations to prevent and control pollutions and promote sustainable development;
 - (t) take or cause to be taken all necessary measures for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution and promotion of sustainable development: and
 - (u) perform any function which the Council may assign to it.
2. The Agency may—
- (a) undertake inquiries or investigation into environmental

issues, either of its own accord or upon complaint from any person or organization;

- (b) request any person to furnish any information or data relevant to its functions;
- (c) initiate with the approval of the Government, requests for foreign assistance in support of the purposes of this Act and enter into arrangements with foreign agencies or organizations for the exchange of material or information and participate in international seminars or meetings;
- (d) recommend to the Government the adoption of financial and fiscal programs, schemes or measure for achieving environmental objective and goals and the purposes of this Act, including--
 - I. incentives, prizes awards, subsidies, tax exemptions, rebates and depreciation allowances: and
 - II. taxes, duties, cesses and other levies;
- (e) establish and maintain laboratories to help in the performance of its functions under this Act, and to conduct research in various aspects of the environment and provide or arrange necessary assistance for establishment of similar laboratories in the private sector; and
- (f) provide or arrange, in accordance with such procedure as may be prescribed, financial assistance for projects designed to facilitate the discharge of its functions.

7. **Powers of the Agency:-** Subject to the provisions of this Act, the Agency may-

- (a) lease, purchase, acquire, own, hold, improve, use or otherwise deal in and with any property both movable and immovable;
- (b) sell, convey, mortgage, pledge, exchange or otherwise dispose of its property and assets;
- (c) fix and realize fees, rates and charges for rendering any service or providing any facility information or data under this Act, or the rules and regulations made thereunder;
- (d) enter into contracts, execute instruments, incur liabilities and do all acts or things necessary for proper management and conduct of its business;
- (e) appoint with the approval of the Government and in accordance with such procedures as may be prescribed, such advisers, experts and consultants as it considers

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necessary for the efficient performance of its functions on such terms and conditions as it may deem fit;

- (f) summon and enforce the attendance of any person and require him to supply any information or document needed for the conduct of any inquiry or investigation into any environmental issue;
- (g) enter and inspect and under the authority of a search warrant issued by the Environmental Tribunal or Environmental Magistrate, search at any reasonable time, any land, building, premises, vehicle or vessel or other place where or in which, there are reasonable grounds to believe that an offence under this Act has been or is being committed.
- (h) take samples of any materials, products, articles or substances or of the effluents, wastes or air pollutants being discharged or emitted or of air, water or land in the vicinity of the discharge or emission;
- (i) arrange for test and analysis of the samples at a certified laboratory;
- (j) confiscate any article used in the commission of the offence where the offender is not known or cannot be found within a reasonable time:

Provided that the power under clauses (f), (h), (i) and (j) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or the rules made under this Act and under the direction of the Environmental Tribunal or Environmental Magistrate.

8. Establishment of the Sustainable Development Funds:-

- (1) There shall be established Sustainable Development Fund.
- (2) The Sustainable Development Fund shall be derived from the following sources, namely.—
 - (a) grants made or loans advanced by the Government of Azad Jammu & Kashmir.
 - (b) aid and assistance, grants advances, donations and other non-obligatory funds received from foreign governments, national or international agencies, and non-governmental organizations; and
 - (c) contributions from private organizations, and other persons.
- (3) The Sustainable Development Fund shall be utilized in accordance with such procedure as may be prescribed for-
 - (a) providing financial assistance to the projects

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designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any specified aspect of environment; and

- (b) any other purpose which in the opinion of the Board will help achieve environmental objectives and the purposes of this Act.

9. **Management of the Sustainable Development Fund:-**

(1) The Sustainable Development Fund shall be managed by a Board known as the Sustainable Development Fund Board consisting of -

- (i) Additional Chief Secretary Planning Chairman and Development Department.
- (ii) Such officers of the Government not exceeding five as the Government may appoint, including Secretaries in charge of the Finance and Environment Departments.
- (iii) 3 non-official persons as the Government may appoint representing the Chamber of Commerce and Industry, non-government organizations, and major donors.
- (iv) Director General of the Agency Member
- (v) Director of the Agency Secretary

(2) In accordance with such procedure and such criteria as may be prescribed the Board shall have the power to-

- (a) Sanction financial assistance for eligible projects;
- (b) invest moneys held in the Sustainable Development Fund in Such profit bearing Government bonds, savings schemes and securities as it may deem suitable; and
- (c) take such measures and exercise such powers as may be necessary for utilization of the Sustainable Development Fund for the purposes specified in sub-section (3) of section 8.

(3) The Board shall constitute committees of its member to undertake regular monitoring of projects financed from the Sustainable Development Fund and to submit progress reports to the Board which shall publish an Annual report incorporating its annual audited accounts, and performance evaluation based on

the progress reports.

10. Prohibition of certain discharges or emissions:-

(1) Subject to the provisions of this Act and the rules and regulations made thereunder no person shall discharge or emit or allow the discharge or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level which is in excess of the Environmental quality standards or, where applicable, the standards established under sub-clause (I) of clause (g) of sub-section (I) of section 6.

(2) The Government levy a pollution charge on any person who contravenes or fails to comply with the provisions of sub-section (1), to be calculated at such rate, and collected in accordance with such procedure as may be prescribed.

(3) Any person who pays the pollution charge levied under sub-section (2) shall not be charged with an offence with respect to that contravention or failure.

(4) The provisions of sub-section (3) shall not apply to projects which commenced industrial activity on or after the thirtieth day of June, 1996.

11. Initial environmental examination and environmental impact assessment:-

(1) No proponent of a project shall commence construction or operation unless he has filed with the Agency an initial environmental examination or, where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Agency approval in respect thereof.

(2) The Agency shall-

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to-

I. trade, manufacturing or business activities,

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processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director-General of the Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive of the project or its proponent; or

II. international relations, national security or maintenance of law and order, except with the consent of the Government; or

III. matters covered by legal professional privilege.

(4) The agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provision of this Act and the rule and regulation made thereunder.

(5) Subject to sub-section (4) the Government may in particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4), and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3).

12. **Prohibition of import of hazardous waste:-** No person shall import hazardous waste into Azad Jammu & Kashmir and its territorial waters, Exclusive Economic Zone and historic waters.

13. **Handling of hazardous substances:-** Subject to the provisions of this Act, no person shall generate, collect, consign, transport, treat, dispose of, store, handle or import any hazardous substance except-

(a) under a license issued by the Agency and in such manner

- as may be prescribed; or
- (b) in accordance with the provisions of any other laws for the time being in force, any international treaty, convention, protocol, code, standard, agreement other instrument to which Pakistan is a party.

14. **Regulation of motor vehicles:-** (1) Subject to the provisions of this Act and the rules and regulations made thereunder, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the Environmental Quality Standards, or where applicable the standards established under clause (g) of sub-section (1) of section 6.

(2) For ensuring compliance with the standards mentioned in sub-section (1) the Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed.

(3) Where a direction has been issued by the Agency under sub-section (2) in respect of any motor vehicles or class of motor vehicles, no person shall operate any such vehicle till such direction has been complied with.

15. **Environmental protection order.--** (1) Where the Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring or has occurred in violation of the provisions of this Act rules or regulations or of the conditions of a license, and is likely to cause, or is causing or has caused an adverse environmental effect, the Agency after giving the person responsible for such discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission an opportunity of being heard, by order direct such person to take such measures that the Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power such measures may include-

- (a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;
- (b) installation, replacement or alteration of any equipment or thing to eliminate or control or abate on a permanent or temporary basis, such discharge, emission, disposal,

handling, act or omission;

- (c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; and
- (d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Agency.

(3) Where the person, to whom directions under sub-section (1) are given, does not comply therewith, the Agency may in addition to the proceeding initiated against him under this Act or the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deem necessary, and may recover the costs of taking such measures from such person as arrears of land revenue.

16. **Penalties:-** (1) Whoever contravenes or fails to comply with the provisions of sections 10, 11, 12, or section 15 or any order issued thereunder shall be punishable with fine which may extend to one million rupees, and in the case of a continuing contravention or failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues and where such contravention or failure continues:

Provided that if contravention of the provisions of section 10 also constitutes contravention of the provisions of section 14, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 13 or 14 or any rule or regulation or conditions of any license, any order or direction issued by the Council or by the Agency shall be punishable with fine which may extend to one hundred thousand rupees, and in case of continuing contravention; or failure with and additional fine which shall extend to one thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-section (1) and (2), the Environmental Tribunal and Environmental Magistrate shall, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1) and (2), the Environmental Tribunal is satisfied that as a result of the commission of the offence monetary benefits have accrued to the offender. The

environmental Tribunal may order the offender to pay, in addition to the fines under sub-section (1), further additional fine commensurate with the amount of the monetary benefits.

(5) Where a person convicted under sub-section (1) or sub-section (2), and had been previously convicted for any contravention under this Act, the Environmental Tribunal, or as the case may be Environmental Magistrate may, in addition to the punishment awarded thereunder-

- (a) endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the Azad Jammu & Kashmir Chamber of Commerce & Industry, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chamber of Commerce and Industry;
 - (b) sentence him to imprisonment for a term which may extend up to two years;
 - (c) order the closure of the factory;
 - (d) order confiscation of the factory, machinery, and equipment, vehicle, material or substance, record or document or other object used or involved in contravention of the provisions of the Act:
Provided that for a period of three years from the date of commencement of this Act, the sentence of imprisonment shall be passed only in respect of persons who have been previously convicted for more than once for any contravention of section 10, 12, 13 or 15 involving hazardous waste;
 - (e) order such person to restore the environment at his own cost, to the conditions existing prior to such contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Agency; and
 - (f) order that such sum be paid to any person as compensation for any loss bodily injury damage to his health or property suffered by such contravention.
- (6) The Director-General of the Agency or an officer generally or specially authorized by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the environmental Magistrate in accordance with such procedure as may be prescribed.
- (7) Where the Director General is of the opinion that a person has contravened any provision of this Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Agency, an administrative penalty in the

amount set out in the notice for each day the contravention continues; and a person who pays an administrative penalty for a contravention shall not be charged under this Act with an offence in respect of such contravention.

(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act, or who has paid an administrative penalty for a contravention of any provision of this Act.

17. **Offences by bodies corporate:-** Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance of, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly: Provided that in the case of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984), only the Chief Executive as defined in the said Ordinance shall be liable under this section.

Explanation:- For the purposes of this section, “body corporate” includes a firm, association of persons and a society registered under the Societies Registration Act, 1860 (XXI of 1860), or under the Co-operative Societies Act, 1925.

18. **Offences by Government Agencies, local authorities or local councils:-** Where any contravention of this Act has been committed by any Government Agency, local authority or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of the head or any other officer of the Government Agency, local authority, or local council, such Head or other officer shall also be deemed guilty of such contravention along with the government Agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.

19. **Environmental Tribunals:-** (1) The Government may, by notification in the official gazette, establish an Environmental Tribunal.

(2) An Environment Tribunal shall consist of a Chairperson who is, or has been, or is qualified for appointment as, a Judge of the High Court to be appointed after consultation with the Chief Justice of the High Court and two members to be appointed by the Government of which at least one shall be a technical member with suitable professional qualifications and experience

in the environmental field as may be prescribed.

(3) For every sitting of the Environmental Tribunal, the presence of the Chairperson and not less than one Member shall be necessary.

(4) A decision of an Environmental Tribunal shall be expressed in terms of the opinion of the majority of its members, including the Chairperson, or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them. The decision of the Environmental Tribunal shall be expressed in terms of the opinion of the Chairperson.

(5) An Environmental Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by, or produced, before it.

(6) An Environmental Tribunal shall hold its sittings at Muzaffarabad, however, based on the load of work and with the prior approval of the Government the Environmental Tribunal may sit at Mirpur also.

(7) No act or proceeding of an Environmental Tribunal shall be invalid by reason only of the existence of a vacancy, in or defect in the constitution of the Environmental Tribunal.

(8) The terms and conditions of service of the Chairperson and member of the Environmental Tribunal shall be such as may be prescribed.

20. **Jurisdiction and powers of Environmental Tribunals:-** (1) An Environmental Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under this Act, or the rules and regulations made thereunder.

(2) All contravention punishable under Sub-section (1) of section 17 shall exclusively be triable by an Environmental Tribunal.

(3) An Environmental Tribunal shall not take cognizance of any offence triable under sub-section (2) except on a complaint in writing by-

(a) the Agency or any Government Agency or local council; and

(b) any aggrieved person, who has given notice of not less than thirty days to the Agency of the alleged contravention and of his intention to make a complaint to the Environmental Tribunal.

(4) In exercise of its criminal jurisdiction, the

Environmental Tribunal, shall have the same powers as are vested in the Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898)

(5) In exercise of the appellate jurisdiction under section 21 the Environmental Tribunal shall have the same powers and shall follow the same procedure as an appellate court in the Code of Civil Procedure, 1908 (Act V of 1908).

(6) In all matters with respect to which no procedure has been provided for in this Act, the Environmental Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V 1908).

(7) An Environmental Tribunal may, on application filed by any officer duly authorized in this behalf by the Director General of the Agency issue bailable warrant for the arrest of any person against whom reasonable suspicion exists of his having been involved in contravention punishable under sub-section (1) of section 16.

Provided that such warrant shall be applied or issued, and executed in accordance with the provision of the Code of Criminal Procedure 1898 (Act V of 1898).

Provided further that if the person arrested executes a bond with sufficient sureties in accordance with the endorsement on the warrant, he shall be released from custody, failing which he shall be taken or sent without delay to the officer-in-charge of the nearest police station.

(8) All proceedings before the Environmental Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Environmental Tribunal shall be deemed to be a court for the purposes of section 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(9) No court other than an Environmental Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of an Environmental Tribunal extends under this Act or the rules and regulations made thereunder.

(10) Where the Environmental Tribunal is satisfied that a complaint made to it under sub-section (3) is false and vexatious to the knowledge of the complainant, it may, by an order, direct the complainant to pay to the person complained against such compensatory cost which may extend to one hundred thousand rupees.

21. **Appeal to the Environmental Tribunal:-** (1) Any person aggrieved by any order or direction of the Agency under any provision of this act and rules or regulations made thereunder

may prefer an appeal with the Environmental Tribunal within thirty days of the date of communication of the impugned order or direction to such person.

(2) An appeal to the Environmental Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

22. Appeals from orders of the Environmental Tribunal:-

(1) Any person aggrieved by any final order or by any sentence of the Environmental Tribunal passed under this Act may, within thirty days communication of such order or sentence, prefer an appeal to the High Court.

(2) An appeal under sub-section (1) shall be heard by a Bench of not less than two Judges.

23. Jurisdiction of Environmental Magistrates:-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force but subject to the provisions of this Act, all contravention punishable under sub-section (2) of section 16 shall exclusively be triable by judicial Magistrate of the first class as Environmental magistrate especially empowered in this behalf by the High Court.

(2) An Environmental Magistrate shall be competent to impose any punishment specified in sub-sections (2) and (4) of section 16.

(3) An Environmental Magistrate shall not take cognizance of an offence triable under sub-section (1) except on a complaint in writing by-

(a) the Agency or Government Agency or local council; and

(b) any aggrieved person.

24. Appeal from orders of Environmental Magistrates:-

any person convicted under this Act or the rules or regulations by an Environmental Magistrate may, within thirty days from the date of his conviction, appeal to the court of Sessions, whose decisions thereon shall be final.

25. Power to delegate.—The Government may, by notification in the official Gazette, delegate any of its or of the Agency's powers and functions under this Act and the rules and regulations made thereunder to Government Agency, local council or local authority.

26. Power to give directions:—In the performance of their functions under this Act, the Agency shall be bound by the directions given to them in writing by the Government.

27. Indemnity:- No suit, prosecution or other legal proceedings shall lie against the Government, the Council, the Agency, the

Director General, the Agency members, officers, employees, experts, advisors, committees or consultants of Agency or the Environmental Tribunal or Tribunal or Environmental Magistrates or any other person for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

28. **Dues recoverable as arrears of land revenue:-** Any dues recoverable by the Agency under this Act, or the rules or regulations made thereunder shall be recoverable as arrears of land revenue.
29. **Act to override other laws:-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
30. **Power to make rules:-** The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act including rules for implementing the provisions of the international environmental agreements, specified in the Schedule to this Act.
31. **Power to amend the Schedule:-** The Government may, be notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.
32. **Power to make regulations:-** (1) For carrying out the purposes of this Act, the Agency may, by notification in the official Gazette and with the approval of the Government, make regulations not inconsistent with the provisions of this Act or the rules made thereunder.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-
- (a) submission of periodical reports, data or information by any Government agency, local authority, or local council in respect of environmental matters.
 - (b) preparation of emergency contingency plans for coping with environmental hazards and pollution caused by accidents, natural disasters and calamities;
 - (c) appointment of officers, advisor, experts, consultants and employees;
 - (d) levy of fees, rates and charges in respect of services rendered, actions and schemes implemented;
 - (e) monitoring and measurement of discharges and emissions;
 - (f) categorization of projects to which, and the manner in which, section applies;
 - (g) laying down of guidelines for preparation of initial environmental examination and environmental impact

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assessment and Development procedures for their filing, review and approval;

- (h) providing procedures for handling hazardous substances; and
- (i) installation of devices in, use of fuels by and maintenance and testing motor vehicles for control of air and noise pollution;

33. Repeal:- The Azad Jammu and Kashmir Environmental Protection Ordinance 2000 (Ordinance No. XXXIV of 2000) is hereby repealed.

SCHEDULE

(See section 31)

1. International Plan Protection Convention Rome. 1951.
2. Plan Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome, 1956.
3. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (As amended), Rome, 1963.
4. Convention on Wetlands of International Importance Especially as waterfowl habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982.
5. Convention concerning the Protection World Cultural and Natural heritage (world heritage convention), Paris, 1972.
6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CTTES), Washington, 1973.
7. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
8. Convention on the Law of the Sea, Montego Bay, 1982.
9. Vienna convention for the Protection of the Ozone Layer, Vienna, 1985.
10. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto.
11. Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1988
12. Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal, Basel, 1989.
13. Convention on Biological Diversity, Rio De Janicro, 1992.
14. United Nations Framework Convention on Climate Change, Rio De Janicro, 1992.

Sd/- (SARDAR MOHAMMAD IBRAHIM KHAN)
PRESIDENT
AZAD JAMMU AND KASHMIR

Sd/- (Syed Atta Mohyuddin Quadri)
Draftsman
Law, Justice & Parliamentary Affairs.